



# ORBAN'S GOVERNMENT HEADS TOWARDS ARBITRARY RULE

## SUMMARY

After Fidesz' overwhelming electoral victory in April 2018, many observers believed Prime Minister Orbán would curb his voracious appetite for turning Hungary into an illiberal state. These expectations were grievously miscalculated.

An illiberal state is nearing completion in Hungary. Hungary remains part of the European Union (EU), but its actions contradict the core values of the EU. Although constitutional institutions do exist, they no longer act as checks and balances on executive power but merely facilitate its operation. Over the past years, legal reforms have weakened independent institutions and independent media, universities, human rights and civil society organizations have been under attack. Now, backed by its parliamentary supermajority, the government has turned to dismantling the last remaining and independent defenders of pluralism and of the rule of law by enacting new constitutional reforms and laws. Again independent institutions and voices are the first targets of this renewed attack.

**We are at the moment when rule of law ends and arbitrary rule begins.**

## TIMELINE – FOLLOWING APRIL 2018 ELECTIONS

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| Mid-April | Key media outlets closed down or changed ownership.  |
| 12 April  | <i>Figyelő</i> magazine published an article 'The Speculator's People' listing the names and affiliation of academics and human rights defenders.  |
| June      | Three NGOs are publicly labeled, by a Fidesz MP and youth groups, as 'organisations promoting migration'.  |
| 19 June   | <i>Figyelő</i> published a second list of names of academics affiliated with the Hungarian Academy of Sciences.  |
| 20 June   | The Seventh Amendment to the Fundamental Law and 'STOP-Soros' Law adopted.   |
| 18 July   | European Commission refers Hungary to the CJEU for breaching EU law on asylum and returns and sends letter of formal notice concerning the 'STOP-Soros' law.   |
| 20 July   | Law on Freedom of Assembly adopted and tax code amended introducing a special 25% tax on financial support to immigration.   |
| August    | Immigration office stops giving food to detained asylum-seekers in the transit zones who challenge their case in court. Meals restarted after the ECHR issued five emergency orders to Hungary.  |
| 28 August | The Central European University suspends its education program to help refugees integrate into academia and the administration of its European Union-funded Marie Curie Research Grant on migration policy in Central and Southern Europe. |

## NEW LAWS JEOPARDISE INDEPENDENT COURTS

With no prior public consultation and merely three weeks after the bills were proposed, the Hungarian Parliament adopted the Seventh Amendment to the Fundamental Law on 20 June.

Given the present collapse of the legislature into an overpowering executive, incremental **changes to the judicial organization are snowballing into a real and serious threat to the rule of law**. The latest constitutional amendment further blurs the boundaries between executive and judicial power, and expands government control over the courts. By further limiting judicial independence and restricting the freedom of judges to interpret the law one of the last bastions of the rule of law is diminished. A new administrative court system may be dominated by judges who, arriving from the state's public administration, will rule on cases involving elections, taxes and public procurement, among many other key civil liberties issues. Its head will be a political appointee selected by Parliament. After months of aggressive campaigning against civil society and the political opposition, senior politicians and the government's media machinery began to discredit individual judges.

## PROPAGANDA CAMPAIGNS INTIMIDATE CIVIL SOCIETY AND CURB PUBLIC DISSENT

The Hungarian government runs and backs propaganda and **smear campaigns to discredit and intimidate dissenters** not only through its own agencies and public media but also through the centrally directed private media portfolio of a close circle of friendly oligarchs.

On 12 April, just four days after election day, Figyelő, a weekly magazine that is part of the government's propaganda machinery, published an article titled "The Speculator's People", which consisted of a list of 200 persons who allegedly work for so-called 'Soros organisations.' This followed the often-repeated narrative in the election campaign that George Soros commands an 'army of mercenaries' in Hungary. Those named included numerous academics of the Central European University, and the entire staff of human rights watchdog NGOs such as the Hungarian Helsinki Committee, Amnesty International Hungary, Hungarian Civil Liberties Union, anti-corruption NGOs Transparency International Hungary and K-Monitor as well as NGOs working on Roma or migrant integration issues.

On 12 June, István Hollik, Fidesz-KDNP coalition spokesperson, held a press conference with the KDNP youth wing in front of Amnesty International Hungary's building, and affixed labels on the door branding it an "organization that supports immigration". On 14 June, Menedék, an NGO helping refugees to integrate was also publicly branded as such. On 27 June, Fidelitas, the Fidesz party's youth wing held a press conference and labelled the building housing the Hungarian Helsinki Committee.

This propaganda campaign was designed to prepare the ground for new laws that unjustifiably restrict the rights of targeted civil society organisations and individuals associated with them.

## NEW LAWS TO STARVE AND STRANGLE CIVIL SOCIETY

The attacks targeting civil society organisations helping asylum-seekers, refugees and migrants culminated from smear campaigns to the threat of criminal prosecutions and sanctions. The final version of the 'Stop Soros' bill became public on 29 May, and was adopted just three weeks later on 20 June - World Refugee Day. The law is in force since 1 July 2018. It changed the Criminal Code by **making the**

**provision of support to asylum and residence applications a crime** punishable with one year of imprisonment.

The government decided not to heed the advice of international organisations that called for respect for freedom of expression and association and the legitimate role that civil society plays in human rights protection. It disregarded recommendations by the Council of Europe's Venice Commission and the OSCE Office of Democratic Institutions and Human Rights or the European People's Party. The Venice Commission/ODIHR found that the new criminal provisions breach freedom of association and of expression as it criminalises legitimate activities and lacks legal certainty. On 18 July, the European Commission launched an infringement action over the law, giving the government a two-month deadline to respond to the formal letter of notice.

On 20 July, Parliament adopted a '**special tax on immigration**' that entered into force on 25 August 2018. The law is effectively a tax on free speech. A 25 percent tax is levied on financial support for activities and organisations that "support migration" through activities such as "carrying out and participating in media campaigns", "building and operating a network", "educational activities" and "propaganda activity that portrays immigration in a positive light". The tax is payable by the organisation giving the support. Certain donors are exempted, such as political parties and party foundations and organisations whose exemption is guaranteed by an international treaty. The tax law is intentionally vague and has created uncertainty about how it will be applied. It paves the way for politically-targeted tax investigations of NGOs which are already under attack. The tax impacts activities taking place in Hungary as well as those by Hungarian organisations carried out anywhere in the world; hence, it also hampers the engagement of Hungarian civil society with transnational partners, and at EU or global level.

On 20 July, Parliament adopted a new **Law on Freedom of Assembly**, which will make it more difficult for Hungarian citizens to protest. While clarifying several controversial issues, the new law is prone to bring about a much more uncertain situation and the conditions for prior restraint are very extensive.

## MEDIA PLURALISM RAPIDLY SHRINKING

The entire media system has been transformed to **disseminate political propaganda messages** more effectively than ever, through a small group of media owners who are completely dependent on the governing party. As the pro-government media portfolio is rapidly expanding, well-established independent and critical media outlets, that used to play a key role in shaping public discourse, have almost disappeared from the market.

Since the 8 April elections, several important media outlets closed down (daily Magyar Nemzet, weekly Heti Válasz) or changed ownership (HírTV). This further **strengthened pro-government domination in print and broadcast media**. Government action helped consolidate media outlets in the hands of pro-government owners, who control much of the domestic media and use their outlets to push the government's anti-immigrant, nativist message. Government effectively subsidizes these private media companies through high-volume advertising by ministries and state-owned companies.

## ACADEMIC AND SCIENTIFIC FREEDOMS UNDER THREAT

On 19 June, Figyelő published a second list of names and pictures of academics and social scientists affiliated with the Hungarian Academy of Sciences who study gender, migration, ethnic minorities and LGBTQ policies. The article claimed that the research topics are politically suspicious, suggesting that the government should have a "greater insight" into the Academy's work. The attack came only days after

the government proposed changes to its research funding system that puts the newly formed Ministry for Innovation and Technology in charge of decisions over funding for research.

In August, the government announced **plans to eliminate gender studies from the country's list of accredited university study programmes**. Adoption of the government decree is expected at any time. This would constitute a case of state intervention into higher education that is unprecedented in the European Union. The two universities concerned, Hungary's biggest state-funded university ELTE, and the private Central European University, were not consulted in advance of the plans and had less than 24 hours to react to the proposal. This measure would pose a serious threat to academic freedom and institutional autonomy and confirm the trend towards increased state control over universities.

The first victim of the special immigration tax is the **Central European University**, which announced on 28 August that it has had to suspend, with the immediate effect, its Open Learning Initiative (OLive), for registered refugees and asylum seekers, together with the administration of its EU-funded Marie Curie Research Grant on migration policy in Central and Southern Europe. Regarding the 2017 higher education law that has put the legal status of the Budapest-based Central European University in limbo, in July 2018, the European Commission requested that the Court of Justice of the EU follow the expedited procedure for the case. The Commission is awaiting confirmation from the Court.

#### ASYLUM: FINAL STEP IN DENYING ACCESS TO PROTECTION - DENIAL OF FOOD

Through border restrictions and limiting access to the asylum system, Hungary has made it almost impossible for people to file an asylum claim or obtain international protection. The Seventh Amendment of the Fundamental Law and changes to the Asylum Act, passed as part of the 'Stop Soros' law, effectively bar access to protection for asylum-seekers by introducing new grounds for declaring an asylum application inadmissible, restricting the right to asylum only to people arriving in Hungary directly from persecution. Given that asylum applications can only be submitted in one of two transit zones at the Serbian border, and the government considered Serbia safe, **all applications will be found inadmissible**. On 18 July, the European Commission launched an infringement action over the law, giving the government a two-month deadline to respond to the formal letter of notice.

In mid-August, the immigration office stopped giving food to adult asylum-seekers who challenged rejection decisions in court, in an attempt to pressure applicants into leaving the transit zone and voluntarily abandoning their asylum claims. Eight asylum-seekers had to seek interim measures from the European Court of Human Rights to stop the inhuman treatment and start receiving meals. After a two-week legal battle, the immigration office began to give food to everyone in detention. However, without changes to the law, **migrants in detention could be denied food once more**.

#### CRIMINALISATION OF HOMELESSNESS

The government has further stigmatised homeless people as criminals. The Seventh Amendment to the Fundamental Law bans homelessness by referring to the protection of the public use of public space. The prohibition of habitual residence in public places seriously violates human dignity. While the Amendment requires all state bodies to protect Christian culture, it also conversely persecutes people without shelter. Until now, sleeping rough could only be deemed illegal by an act of parliament or municipal decree in respect of certain parts of a public place. Now homelessness is banned throughout the whole country.